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Nos. 17, 18 and 19

IN THE

Supreme Court of the United States

October Term, 1944

THE UNITED STATES OF AMERICA, *Appellant,*

v.

CRESCENT AMUSEMENT COMPANY, ROCKWOOD AMUSEMENT COMPANY, CHEROKEE AMUSEMENTS, INC., *et al.,*

CRESCENT AMUSEMENT COMPANY, CUMBERLAND AMUSEMENT COMPANY, LYRIC AMUSEMENT COMPANY, INC., *et al.,* *Appellants,*

v.

THE UNITED STATES OF AMERICA.

MOTION OF THE SOCIETY OF INDEPENDENT MOTION PICTURE PRODUCERS FOR LEAVE TO FILE BRIEF AS *AMICUS CURIAE*

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Lloyd Wright

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THE UNITED STATES OF AMERICA.

Motion for Leave to File Brief on Behalf of *Amicus Curiae*

MAY IT PLEASE THE COURT:

The undersigned, as counsel for The Society of Independent Motion Picture Producers, respectfully moves this Honorable Court for leave to file a brief *amicus curiae* in these cases.

1. The Government filed a petition for appeal in No. 17, which was allowed on July 16, 1943 and a petition for appeal in No. 18, which was allowed on October 27, 1943.

The defendants' petition for appeal in No. 19 was filed and allowed on October 29, 1943.

2. The association above named has requested the consent of both parties to the submission of a brief *amicus*. Consent has been granted by the Government. Counsel for the defendants has indicated his disinclination to consent in advance of seeing the brief in final form. Page proofs of the brief, subject only to final polishing, were sent to him on Tuesday, October 10, and final printed briefs together with a copy of this motion were sent to him prior to the filing hereof. Defendants' counsel had previously been notified of our intention to file the brief and accepted by wire such notice of intention.

3. Although by reason of the foregoing circumstances consent of both parties to the litigation has not been obtained as provided in Rule 27, subd. 9 of the Rules of this Court, it is respectfully submitted that the present case affords an appropriate occasion for the exercise of this Court's discretion and undoubted power to receive the *amicus* brief.

4. The United States brought this suit against nine affiliated companies operating motion picture theatres in five southern states, four individual officers of these companies and the eight major distributors of films, charging them with conspiracy to restrict interstate commerce in motion picture films and to monopolize the exhibition of films in violation of Sections 1 and 2 of the Sherman Act. The District Court rendered no opinion but filed findings of fact and conclusions of law. Final judgment was entered in accordance with these findings on May 17, 1943, prohibiting seven of the nine exhibitors, three of the four individual defendants and one major distributor from engaging in certain practices which the Court found to be illegal.

5. The members of The Society of Independent Motion Picture Producers are:

Cagney Productions, Inc.
Charles Chaplin
Edward Small Productions
Edward A. Golden
Samuel Goldwyn
Sol Lesser
Mary Pickford
Hunt Stromberg
Vanguard Films, Inc. (David O. Selznick)
Walt Disney Productions
Walter F. Wanger
Orson Welles

6. The emphasis of the Government at the trial was on the effect of the defendants' practices on independent exhibitor competition. But The Society of Independent Motion Picture Producers believes that the defendants' practices are equally fraught with peril to independent producers such as those who comprise the membership of the Society. Furthermore, the Society believes that the defendants' activities represent a grave menace to the motion picture industry as a whole, and that they impinge upon rights of the movie-going public which are protected by the First Amendment. These three impacts of the defendants' activities—upon the independent producers, upon the industry as a whole, and upon the movie-going public—are fully discussed in the attached *amicus* brief. Although they are implicit in the Record, neither the Government nor the defendants have touched upon them more than incidentally. Accordingly, we believe that the attached brief will be of assistance to the Court to the extent that it illuminates aspects of the litigation which are not developed in the briefs of the parties.

We, therefore, respectfully urge that the Court grant leave to file the attached brief on behalf of The Society of Independent Motion Picture Producers as *amicus curiae*; such brief to be filed not later than the 18th day of October, 1944.

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